

*Regular dealer* means regular dealer as defined by the Walsh-Healey Public Contracts Act, 41 U.S.C. 35-45, and Department of Labor regulations found at 41 CFR 50-201.101, 50-206.53, and 50-206.54.

*Requirement* means a contract opportunity from a Federal procuring agency to acquire articles, equipment, supplies, services, materials or construction work.

*Same or similar line of business* means all business activities within the same two-digit "Major Group" of the Standard Industrial Classification (SIC) System (set forth in the SIC Manual), as the primary industry classification of the applicant concern.

*Self-marketing* of a requirement occurs when an 8(a) firm identifies a requirement that has not been committed to the 8(a) program and, through its marketing efforts causes the procuring agency to offer that specific requirement to the 8(a) program on its behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) program as an open requirement or on behalf of another 8(a) Participant has not "self-marketed" the requirement within the meaning of these regulations.

*Termination* means the permanent cessation of 8(a) Program Participation prior to the expiration of the concern's Program Term for good cause pursuant to § 124.209.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*Unconditional ownership* means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, shareholder agreements or other similar arrangements which serve to allow the primary benefits of Program Participation to accrue to entities or individuals other than upon whom 8(a) program eligibility is based.

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 34902, Aug. 27, 1990; 60 FR 29974, June 7, 1995]

**§ 124.101 The 8(a) program: General eligibility.**

(a) In order to be eligible to participate in the 8(a) program, an applicant concern and an individual upon whom

8(a) eligibility is based must meet all of the eligibility criteria set forth in §§ 124.102 through 124.109 hereunder. An applicant concern owned and controlled by an Indian tribe must meet the requirements set forth in § 124.112 and in §§ 124.102 through 124.109 as applicable. An applicant concern owned and controlled by a Native Hawaiian Organization must meet the requirements set forth in § 124.113 and in §§ 124.102 through 124.109, as applicable. An applicant concern owned and controlled by a Community Development Corporation must meet the requirements set forth in § 124.114 and in §§ 124.102 through 124.109, as applicable. All determinations by the AA/MSB&COD made pursuant to §§ 124.102, 124.103, 124.104, 124.105, 124.106, and 124.107 shall be in writing, setting forth the findings based on relevant facts and in accordance with law and regulations, upon which the determination is based. An applicant concern which is declined 8(a) program admission may request a reconsideration of such decline, as set forth in § 124.206. If the application is declined on reconsideration based solely on a negative finding of social disadvantage, economic disadvantage, ownership or control, such decline may be appealed by an unsuccessful applicant to the Office of Hearings and Appeals. If no reconsideration is sought, or if after reconsideration, the application is declined based in whole or in part on a ground other than a negative finding of social disadvantage, economic disadvantage, ownership or control, the written decline of the AA/MSB&COD is final and not subject to appeal. Appeal procedures for a decline of program admission by the AA/MSB&COD and grounds for which such an appeal may be brought are set forth in § 124.210 and part 134 of this title. The written decision of the Office of Hearings and Appeals shall be the final Agency decision. A concern which has been declined for 8(a) program admission may reapply for program admission 12 months after the date of the final Agency decision to decline.

(b) In order to continue its participation in the 8(a) program, a Program Participant must continue to meet all eligibility requirements described in §§ 124.102 through 124.109, § 124.111(a),

and § 124.112, § 124.113 or § 124.114, if applicable. In order to continue its participation in the 8(a) program, a concern certified for program participation prior to the effective date of these regulations must comply with the requirements of §§ 124.102 through 124.109, 124.11(a) and 124.112, if applicable, which have been previously required by regulation, policy or procedure. Within 12 months of the effective date of these regulations, such concerns must also come into compliance with the requirements of paragraph (a) of this section which have not been previously required by regulation, policy or procedure. Failure to do so may lead to termination or graduation pursuant to §§ 124.208 and 124.209.

(c)(1) It is SBA's intent to process applications for participation in a fair and consistent manner and to ensure that 8(a) program participation is limited to eligible individuals and concerns. Toward that end, SBA invites the participation of the public in preventing fraud and assuring the integrity of the 8(a) program.

(2) The AA/MSB&COD shall cause to be reviewed any determination that an individual, applicant concern or Participant is eligible to participate in the 8(a) program whenever a member of the public submits credible evidence that

(i) Such determination was based on fraudulent information;

(ii) SBA did not follow the requirements of these regulations in rendering the determination; or

(iii) The individual or concern has undergone one or more changes which have rendered it ineligible for 8(a) Program Participation.

(3) The AA/MSB&COD shall determine whether the facts developed during any such review warrant further action. The member of the public whose information gave rise to the review shall be advised of SBA's findings, consistent with laws protecting confidentiality.

[54 FR 34712, Aug. 21, 1989, as amended at 60 FR 29974, June 7, 1995]

**§ 124.102 Small business concern.**

(a) In order to be approved for participation in the 8(a) program, an applicant concern must qualify as a small business concern as defined in part 121

of this title. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. The size of a tribally-owned concern, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation shall be additionally determined by reference to § 124.122, § 124.113 or § 124.114, respectively.

(b) If the AA/MSB&COD is unable to determine that an applicant concern qualifies as a small business, the AA/MSB&COD may deny the concern's application for 8(a) program admission or may request a formal size determination from the appropriate regional office. If the application is so denied, the small business concern may request a formal size determination from the appropriate regional office pursuant to part 121 of this title. Size determinations by an SBA regional office may be appealed to SBA's Office of Hearings and Appeals pursuant to part 121 of this title.

(c) In order to continue to participate in the 8(a) program, a Program Participant must qualify pursuant to the provisions of part 121 of this title as a small business under one or more of the SIC Codes contained in the concern's approved business plan.

(d) Except for contracts awarded to joint ventures controlled by eligible Indian tribes, under § 124.321, a Program Participant must certify that it is a small business pursuant to part 121 of this title for the purpose of performing each contract awarded under the authority of section 8(a). SBA, in turn, will undertake to verify such certifications. In the event that the SBA does not verify a certification, the Program Participant may request a formal size determination from the appropriate SBA regional office. Formal size determinations will be conducted in accordance with part 121 of this title.

[54 FR 34712, Aug. 21, 1989, as amended at 60 FR 29974, June 7, 1995]

**§ 124.103 Ownership requirements.**

Except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations, as